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Sears Roebuck & Co.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PETER J. VOGGENTHALER, et al.

Plaintiffs,

vs.

MARYLAND SQUARE, LLC; et. al.

Defendants.

Case No.: 2:08-cv-01618-RCJ-GWF

Consolidated with:

AND RELATED CROSS AND THIRD PARTY
CLAIMS

Case No.: 3:09-cv-00231-RCJ-GWF

STATE OF NEVADA, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, DIVISION OF
ENVIRONMENTAL PROTECTION, BUREAU
OF CORRECTIVE ACTIONS,

Plaintiff,

vs.

MARYLAND SQUARE SHOPPING CENTER,
LLC, et. al.

Defendants

**ORDER REGARDING
THIRD PARTY DEFENDANT
SEARS ROEBUCK & CO.'S MOTION
FOR CONTINUANCE AND EXTENSION
OF TIME TO OPPOSE MOTION TO
COMPEL COMPLIANCE WITH
SUBPOENA**

FIRST REQUEST

AND RELATED THIRD PARTY CLAIMS

1 Third Party Defendant Sears Roebuck & Company ("Sears"), by and through counsel of
2 record, Greenberg Traurig, LLP, submits this Motion for an extension of time to file an opposition
3 to the Motion to Compel Compliance with Subpoena [Doc. 476] filed by Third Party
4 Plaintiffs Maryland Square Shopping Center, LLC; the Herman Kishner Trust, dba Maryland
5 Square Shopping Center; Irwin Kishner, Jerry Engel, and Bank of America, as Trustees for The
6 Herman Kishner Trust; (collectively, "Kishner Parties). This request is made pursuant to Local
7 Rule 6.1, and is based upon the attached memorandum of authorities, the files and pleadings in the
8 case, and such oral argument as the Court may permit.
9

10 MEMORANDUM OF AUTHORITIES

11 Sears respectfully requests an extension of time to respond to the Kishner Parties' Motion to
12 Compel Compliance ("Motion") with a subpoena issued by the Maryland Square Parties in July 13,
13 2010. **See Motion, Exhibit 3.** The subpoena was issued pursuant to FRCP 45; no discovery
14 schedule has been set for the third party litigation in this matter.
15

16 The Motion was filed on October 5, 2010, and Sears' opposition is due on October 22, 2010.
17 The motion includes affidavit from an expert that had not been included with the subpoena. A
18 hearing of the Motion has been set for November 4, 2010 at 10:30 am before Magistrate Judge
19 George Foley. Sears respectfully requests a two week extension of time in which to file its
20 opposition. Because that two week period would extend beyond the time of the scheduled hearing,
21 a continuance of the hearing to a date convenient to the Magistrate Judge is also requested.
22

23 Good cause exists for such extension as Sears has been required to engage an expert
24 witness to review the expert opinions included in the Motion, including the opinion of Mr. Howe
25 not received prior to that Motion. Sears' expert is unable to complete her report within the existing
26 time period for a response, but does anticipate that her report regarding the proposed testing can be
27 completed by November 12, 2010.
28

The undersigned affirms that a request for an extension of time to file an opposition was made to counsel for the Kishner Parties on October 18, 2010, which request was denied the same day. It is the understanding of Sears' counsel that counsel for the Boulevard Mall, another third party defendant at whom the Motion to Compel is directed, will also be requesting an extension and continuance.

DATED this ____ day of October 2010.

GREENBERG TRAURIG, LLP

BY: /S/ TAMID D. COWDEN

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ORDER

The time for the response to the Kishner Parties' Motion to Compel Compliance is extended from October 22, 2010 to November 12, 2010. The date of the hearing of such motion is rescheduled to November 29, 2010 at 9:30 a.m.

IT IS SO ORDERED,



GEORGE FOLEY, JR.

United States Magistrate Judge

DATED: October 20, 2010

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October 2010, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, District of Nevada, using the electronic case filing system. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ S. Renee Hoban
An employee of Greenberg Traurig

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